

Applicant : Hugues Malandain  
Serial No. : 10/826,684  
Filed : April 16, 2004  
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Attorney's Docket No.: 17116-004001 / 050-0002US01

## REMARKS

This response is being filed with a Request for Continued Examination. Claims 1-44 are pending. Claims 1, 38, and 43-44 are in independent form.

Claims 1, 3-4, 13, 28-29, 31-33, 36-38, and 43-44 are amended for clarity and to provide clearer antecedent basis. No new matter has been added. Reconsideration of the action mailed September 12, 2007, is respectfully requested in light of the foregoing amendments and the following remarks.

Claims 1-7, 10-13, 16, 20-24, 31-36, and 38-44 are rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 5,591,166 (“Bernhardt”). Claims 8, 9, 26, and 27 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over U.S. Patent No. 5,591,166 (“Bernhardt”). Claims 14, 15, 18, 19, and 25 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over U.S. Patent No. 5,591,166 (“Bernhardt”), further in view of U.S. Patent No. 6,315,779 (“Morrison”). Applicant respectfully traverses the rejections

### **Allowable Subject Matter**

The Examiner has noted that claims 28-30 and 37 are objectionable as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the Examiner’s identification of allowable subject matter in claims 28-30 and 37.

### **Section 102 Rejections**

Claim 1 was rejected over Bernhardt. Claim 1 is directed to an implantable medical device for supporting bone that includes a support structure having a receiver and a plurality of anchor assemblies. When the medical device is assembled, the plurality of anchor assemblies do not pass through the support element, i.e., they do not pass through to effect assembly nor after assembly.

The Examiner states that Bernhardt discloses the claimed anchor assemblies. Applicant respectfully disagrees.

Bernhardt discloses a bone plate for joining bone bolts to form a particular relative alignment. *See col. 2, lines 33-37.* Each bone bolt (which the Examiner identifies as the claimed anchor assembly) includes a threaded portion for insertion into a bone, and a multi-angled fastener head attached to the threaded portion and including a threaded projection for fastening the bone bolt to the bone plate. *See col. 3, lines 49-64; FIG. 3.* The Examiner identifies the bone plate as the claimed support element and the multi-angle fastener as the claimed base head. The multi-angled fastener includes a ball and socket joint allowing the threaded portion to pivot to a desired orientation and locked into place. *See col. 4, lines 1-12 and 32-40; FIG. 3.*

To fasten the bone bolt to the bone plate, the protrusion of the multi-angled fastener of the bone bolt is passed from beneath the bone plate through an aperture. *See col. 3, lines 36-48; FIGS. 1 and 5.* A fastener, such as a nut, is then used from the top of the bone plate to lock the bone bolt to the bone plate. *See col. 3, lines 36-48; FIGS. 1 and 5.* Thus, a portion of the bone bolt (the protrusion) passes through the bone plate and is fastened from the top of the bone plate.

In contrast, claim 1 requires that the anchor assemblies do not pass though the support element. Bernhardt does not disclose or suggest such a structure. In contrast, the bone bolt of Bernhardt does pass through the top portion of the bone plate. Moreover, the structure of Bernhardt is incapable of fixing the bone bolts to the bone plate without passing a portion of the bone bolts through the bone plate.

Applicant respectfully submits that claim 1, as well as claims 2-34 and 36-37, which depend from claim 1, are in condition for allowance.

Claim 38 was rejected over Bernhardt. Claim 38 is directed to a method for supporting a bony structure that includes locking anchor assemblies within a support element receiver, where the anchor assemblies, when locked in the receiver, do not pass through a top portion of the support element. As set forth above with respect to claim 1, Bernhardt does not disclose or suggest locking anchor assemblies within a support structure where the anchor assemblies do not pass through the top potion of the support element. Applicant respectfully submits that claim 38, as well as claims 39-42, which depend from claim 38, are in condition for allowance.

Claim 43 was rejected over Bernhardt. Claim 43 is directed to a method for effecting a desired vertebral disk spacing that includes locking anchor assemblies within a support element, where the anchor assemblies do not pass through the support element. As set forth above with

respect to claim 1, Bernhardt does not disclose or suggest locking anchor assemblies within a support structure where the anchor assemblies do not pass through the support element.

Applicant respectfully submits that claim 43 is in condition for allowance.

Claim 44 was rejected over Bernhardt. Claim 44 is directed to a method for effecting a desired curvature of the spine that includes locking anchor assemblies within a support element, where the anchor assemblies do not pass through the support element. As set forth above with respect to claim 1, Bernhardt does not disclose or suggest locking anchor assemblies within a support structure where the anchor assemblies do not pass through the support element.

Applicant respectfully submits that claim 44 is in condition for allowance.

### **Conclusion**

For the foregoing reasons, Applicant submits that all the claims are in condition for allowance.

By responding in the foregoing remarks only to particular positions taken by the Examiner, Applicant does not acquiesce with other positions that have not been explicitly addressed. In addition, Applicant's selecting some particular arguments for the patentability of a claim should not be understood as implying that no other reasons for the patentability of that claim exist. Finally, Applicant's decision to amend or cancel any claim should not be understood as implying that Applicant agrees with any positions taken by the Examiner with respect to that claim or other claims.

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The RCE fee in the amount of \$810 and two-month extension of time fee in the amount of \$460 are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any charges not otherwise paid or any credits to deposit account 06-1050.

Respectfully submitted,

Date: January 29, 2008

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